U.S. Department of Homeland Security
Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: SEP 12 2014 OFFICE: SAN FRANCISCO File: [redacted]

IN RE: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. §1182(a)(9)(A)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Francisco, denied the Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Mongolia who was removed from the United States on October 3, 2008, pursuant to a final order of removal under section 237(a)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1227, as an alien present in the United States in violation of the Act, and the record reflects she has remained outside the United States to date. On October 9, 2008, U.S. Citizenship and Immigration Services (USCIS) approved the Petition for Alien Relative (Form I-130) filed on her behalf by her U.S. citizen spouse. She seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. §1182(a)(9)(A)(iii), in order to reside in the United States with her U.S. citizen spouse and mother-in-law.

The Field Office Director determined that the unfavorable factors in the applicant's case outweighed the favorable factors and denied the Form I-212 accordingly. *See Field Office Director's Decision,* dated April 10, 2014.

On appeal, the applicant[1] asserts that USCIS erroneously applied the facts in her case, and additional documentation submitted in support of her appeal demonstrates: her spouse is receiving treatment for depression; the level of care her spouse and mother-in-law provided to one another has declined sharply over the years as their health has steadily declined; the financial support her spouse receives from his grandmother is "rather insignificant"; and USCIS should give more weight to the evidence showing that her support for her spouse and his family "is sorely needed." *See Applicant's Statement in Support of the Appeal*, dated May 9, 2014.

The record includes, but is not limited to: briefs and correspondence; affidavits by the applicant, her spouse, mother-in-law, and grandmother-in-law; letters of support; documents establishing identity and relationships; academic, employment, financial, and medical documents; training certificates; photographs; articles concerning the field of veterinary medicine; and documents on conditions in Mongolia. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides, in relevant part:

> (A) Certain aliens previously removed.-
>
> ...

[1] The record reflects the applicant was represented by legal counsel when she submitted her Form I-212. *See Notice of Entry of Appearance as Attorney or Accredited Representative* (Form G-28), dated July 18, 2013. However, the record includes a statement submitted by the applicant's spouse on appeal, dated June 8, 2014, in which he indicates that they cannot afford an attorney. The appeal does not include a new Form G-28. We therefore consider the applicant to be self-represented.

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

...

and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now the Secretary of Homeland Security] has consented to the alien's reapplying for admission.

The record reflects the applicant entered the United States on March 20, 2004 as a B-1 visitor and was authorized to remain until May 18, 2004. The record also reflects the applicant received an extension of her B-1 status until November 18, 2004, but she did not timely depart. She filed an asylum application with USCIS on March 21, 2005. The asylum application was referred to the immigration judge on April 27, 2005. The immigration judge denied the applicant's requests for asylum, withholding of removal, and protection under the U.N. Convention Against Torture on August 23, 2006, and granted her voluntary departure until October 23, 2006. The applicant's appeal to the Board of Immigration Appeals (BIA) was dismissed on December 21, 2007. The applicant filed a motion to reopen with the BIA to apply for adjustment of status based on her marriage to a U.S. citizen, which occurred on December 6, 2006. The BIA denied the applicant's motion to reopen on March 24, 2008, and thereby, the applicant became subject to a final order of removal.

The record also reflects the applicant did not depart the United States but appeared with her spouse for an interview with USCIS on July 11, 2008, concerning the Form I-130 her spouse filed on her behalf. As the applicant was subject to a final order of removal, immigration officials apprehended her at the interview, detained her, and subsequently removed her on October 3, 2008. The record indicates that she has remained outside the United States to date. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii)(I) of the Act. The applicant does not contest this finding. Accordingly, we will determine, as a matter of discretion, whether an exception under 212(a)(9)(A)(iii) of the Act should be applied to the applicant's inadmissibility so that she may reside with her U.S. citizen spouse and mother-in-law.

In *Matter of Tin*, 14 I&N Dec. 371 (Reg. Comm. 1973), the Regional Commissioner listed the following factors to be considered in the adjudication of a Form I-212:

> The basis for deportation; recency of deportation; length of residence in the United States; applicant's moral character; his respect for law and order; evidence of reformation and rehabilitation; family responsibilities; any inadmissibility under other sections of law; hardship involved to himself and others; and the need for his services in the United States.

In *Tin,* the Regional Commissioner noted the applicant had gained an equity (job experience) while being unlawfully present in the U.S. The Regional Commissioner then stated the alien had obtained an advantage over aliens seeking visa issuance abroad or who abide by the terms of their admission while in this country, and he concluded the approval of an application for permission to reapply for admission would condone the alien's acts and could encourage others to enter the United States to work in the United States unlawfully. *Id.*

Matter of Lee, 17 I&N Dec. 275 (Comm. 1978) further held that a record of immigration violations, standing alone, did not conclusively support a finding of a lack of good moral character. *Id.* at 278. *Lee* additionally held,

> [T]he recency of deportation can only be considered when there is a finding of poor moral character based on moral turpitude in the conduct and attitude of a person which evinces a callous conscience [toward the violation of immigration laws] . . . In all other instances when the cause of deportation has been removed and the person now appears eligible for issuance of a visa, the time factor should not be considered. *Id.*

The 7th Circuit Court of Appeals held in *Garcia–Lopes v. INS*, 923 F.2d 72 (7th Cir. 1991), that less weight is given to equities acquired after a deportation order has been entered. Further, the equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of deportation proceedings, with knowledge that the alien might be deported. It is also noted that the Ninth Circuit Court of Appeals, in *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), held that an after-acquired equity, referred to as an after-acquired family tie in *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998), need not be accorded great weight by the district director in a discretionary determination. Moreover, in *Ghassan v. INS*, 972 F.2d 631, 634-35 (5th Cir. 1992), the Fifth Circuit Court of Appeals held that giving diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien's possible deportation was proper. We find these legal decisions establish the general principle that "after-acquired equities" are accorded less weight for purposes of assessing favorable equities in the exercise of discretion.

The favorable factors in this case are the applicant's family ties in the United States, specifically to her U.S. citizen spouse, mother-in-law, and grandmother-in-law; an approved I-130 petition; no evidence of a criminal record; affidavits of support attesting to the applicant's good moral character; emotional and physical hardship to the applicant's spouse, mother-in-law, and grandmother-in-law;

the applicant's efforts to legalize her status during most of her time in the United States; and the likelihood that she will be found eligible for lawful permanent residence.

The unfavorable factors include the applicant's removal in 2008 and periods of unauthorized presence amounting cumulatively to less than a year.

Although the weight given to the hardship to the applicant's spouse and in-laws is diminished because she and her spouse married after she was placed in removal proceedings, we conclude that, taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the applicant is eligible for a section 212(a)(9)(A)(iii) exception to inadmissibility.

The burden of establishing eligibility for an exception rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden and the appeal will be sustained.

ORDER: The appeal is sustained.